IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No: 815 of 2005

Date of decision: 21.3.2007

Nagender Sharma **Petitioner**

Versus

State of H.P. and others **Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice S.S.Thakur, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Pankaj Sharma, vice counsel

For the Respondents: Mr.M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General.

Per Deepak Gupta, J.(Oral)

This petition is directed against the order of learned H.P.State Administrative Tribunal, dated July 22, 2005.

Brief facts leading to the filing of the original application before the learned H.P.State Administrative Tribunal are that the petitioner herein, who was working as Foreman Grade-I in Mechanical Sub Division, Parchu, Tehsil Sarkaghat under Mechanical Division, Bilaspur

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Circle, Dhalli, Shimla was transferred to Circle Rohru vide Annexure P-1, dated 16.9.2004. In the order, it was mentioned that the petitioner would not be entitled to Transfer and Travelling allowance and joining time.

The petitioner challenged his transfer before the learned Tribunal basically on two grounds; (i) that he could not be transferred out of his circle because the cadre is maintained circle-wise; and (ii) that since the transfer was without his consent, he, in any event, should have been paid his Transfer and Travelling allowance and granted joining time as per the rules.

The learned Tribunal, after considering the entire law and the judgment of the apex court in **N.H.P.C. Vs. Bhagwan and another All India Service Law Journal 2002 (1), 86** has come to the conclusion that the petitioner could have been transferred out of his circle. The learned Tribunal has also observed that the State has categorically stated that the seniority of the petitioner would be maintained and in case of further promotion, his case would be considered as per his seniority in the previous circle. It would be pertinent to mention that as noted by the learned Tribunal, the petitioner had, in compliance to the transfer orders, joined at Rohru on

25.9.2004. More than two and half years have elapsed. Therefore, we dispose of the writ petition by passing the following directions :-

1. That since the transfer of the petitioner was not made with his consent, he shall be paid his Transfer and Travelling Allowance and shall also be granted joining time as per rules ;
2. We would also like to observe that since the petitioner has remained posted at Rohru for almost 3 years, in case he makes representation for his transfer from out of Rohru circle back to his original circle, the same shall be considered sympathetically in accordance with law.

The writ petition is disposed of in the aforesaid terms.

(Deepak Gupta),J.

March 21, 2007(K) (Surinder Singh),J.